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Inquiry into ABC On-line

Final Report

**Report of the Senate Environment, Communications,
Information Technology and the Arts References Committee**

March 2001

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ABC ONLINE INQUIRY

Introduction

1.1 On 17 February 2000, the Senate referred the following matters to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and interim report on the matters specified in paragraphs (a) and (b), by 3 April 2000 (subsequently extended to 12 April 2000); and final report on the matters specified in paragraph (c), by 30 October 2000 (subsequently extended to 29 March 2001):

- (a) any existing commercial arrangements for the production, supply or distribution of Australian Broadcasting Corporation (ABC) material online, including, but not limited to, mechanisms for ensuring ABC editorial control and independence;
- (b) any proposed commercial arrangements for the production, supply or distribution of ABC material online, including, but not limited to, mechanisms for ensuring ABC editorial control and independence; and
- (c) any extension to legislation which could be considered to ensure that the ABC is able to effectively provide an independent, innovative and comprehensive service in the online delivery environment.

1.2 The Committee tabled the interim report on paragraphs (a) and (b) of the reference: www.abc.net.au *Inquiry into ABC On-line*, on 12 April 2000.¹

1.3 During the course of the first part of its inquiry, the Committee received seven submissions relating to paragraph (c) of the terms of reference. The Committee agreed to re-advertise part two of its inquiry in *The Australian*, on 24 October and *The Sydney Morning Herald*, on 25 October 2000. No additional submissions were attracted as a result. The Committee thanks all those who made submissions. A list of submissions is at Appendix 1.

1.4 Since the tabling of the interim report, the ABC has been the subject of comprehensive questioning at four rounds of estimates hearings and numerous Senate debates, relating to its delivery of online services. As a result, the Committee considers that, at this point in time, any extension to legislation to ensure that the ABC is able to effectively provide an independent, innovative and comprehensive service in the online delivery environment, is not warranted.

1.5 Therefore, the Committee has resolved to take no further action on its inquiry into paragraph (c) of this reference. Should any concerns in relation to the ABC's

1 A copy of the Report is available from the Committee's website:
http://www.aph.gov.au/senate/committee/ecita_ctte/index.htm

delivery of online services become evident, then the Committee may seek a further reference.

Senator Lyn Allison

Chair

March 2001

ABC ONLINE INQUIRY - FINAL REPORT

MINORITY REPORT BY LABOR SENATORS

1.1 The Senate Environment, Communications, Information Technology and the Arts References Committee tabled its Interim Report to the Inquiry into ABC Online on 12 April 2000. The interim report addressed the first and second terms of reference of the inquiry, that is terms of reference (a) and (b). This Report relates to the third term of reference of that Inquiry into the sale of ABC Online content, specifically:

(c) Any extension to legislation which could be considered to ensure the ABC is able to effectively provide an independent, innovative and comprehensive service in the online delivery environment.

1.2 This term of reference calls for a consideration of two main issues:

- Whether the ABC Act requires amendment to prohibit advertising on online and datacasting services.
- Whether the ABC Act requires amendment to incorporate online, datacasting and other emerging activities.

Background to Inquiry

1.3 The Australian Broadcasting Corporation's online activities and the commercial arrangements relating to such activities were the stimulus for this Senate Committee inquiry. The ABC's independence and integrity are recognised and valued by Australians. ABC Online was initiated in 1995, and has rapidly become a significant medium for the delivery of ABC material to audiences.¹

1.4 For those reasons, last year's proposed commercial arrangement between Telstra and ABC Online gave rise to a number of concerns that the arrangements conflicted with the ABC's role as an independent provider of information to Australians. Even though negotiations with Telstra were ultimately terminated,² and the deal not pursued, Mr Quentin Dempster's submission to this Inquiry notes that:

“...[the Managing Director's] stated reasons had nothing whatsoever to do with the risk of editorial independence through fully commercial business

1 Mr B. Johns, Additional Estimates, Senate Environment, Communications, Information Technologies and the Arts Legislation Committee, *Official Committee Hansard*, 10 February 2000, p 106; ABC website at <http://www.abc.gov.au/default.htm> and <http://www.abc.gov.au/corp/hist1.htm>.

2 See ABC Media Release at <http://www.abc.net.au/corp/mr00/mrjun0900.htm>

plans and strategic alliances with other online and broadband cable delivery systems.”³

1.5 As a consequence, the issues that were discussed in the interim report remain problematic as no resolution or precautionary measures have been implemented, and there is no apparent intention to resolve those issues in the near future.

Advertising

1.6 The *Australian Broadcasting Corporation Act 1983* (“ABC Act”) expressly prohibits the ABC from broadcasting advertisements.⁴

1.7 A concern raised with the Committee is that the ABC is not prohibited from advertising on other services which are not ‘broadcast’ such as online services⁵ and datacasting services. This is clearly an anomaly that exists simply because the drafters of the legislation could not have even conceived of the alternative means of delivery of ABC content now being utilised.⁶

1.8 Labor Senators believe that the prohibition on advertising should extend to all transmission/delivery platforms of the ABC as this is the only way to maintain the integrity, independence and freedom from commercialisation of the organisation as a whole.

1.9 It would seem that the ABC’s Managing Director supports us on this issue. In a recent speech,⁷ Mr Shier stated that:

“ABC management is not suggesting that we introduce advertising onto ABC television, radio or on ABC managed internet sites. You only need to look to countries like New Zealand and Canada to see what damage can be done to public broadcasting as a result of undue commercialisation.”

1.10 ALP Senators welcome this acknowledgment of the dangers of commercialisation and advertising on the ABC. Interestingly, Mr Shier includes ABC’s online activities in this denunciation of advertising on ABC services.

1.11 This concords with the position taken by Labor Senators that advertising should be prohibited on ABC Online.

3 Mr Quentin Dempster, Submission 1, p 1.

4 Section 31(1).

5 Mr Quentin Dempster, Submission 1, p 2; Friends of the ABC, Submission 2, p 1; Ms Ramona Koval, Submission 3, p 3; CPSU, Submission 4, p 1.

6 Mr Quentin Dempster, Submission 1; Friends of the ABC, Submission 2; CPSU, Submission 4, p 1.

7 At <http://www.abc.net.au/corp/pubs/speeches/spmar0601.htm>

New and emerging ABC services

1.12 The *Australian Broadcasting Corporation Act 1983* does not expressly provide for the ABC's online services and other services emerging in the new digital environment.

1.13 The ABC informed the Committee that its legal advice is that it has undoubted power under subsection 25(1) of the Act to establish and maintain its internet site.⁸

1.14 The ABC suggested that if any amendments to its Act are deemed necessary, they should be incorporated with consequential amendments arising from the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000*.⁹

1.15 This is precisely the course of action pursued by the Opposition when the *Broadcasting Legislation Amendment Bill 2000* [2001] came before the Senate on the 27th February 2001.¹⁰

1.16 The amendments moved by the Opposition would have expanded the ABC Act to incorporate new activities and services that have already become available and will become available in the foreseeable future. The existing provisions of the Act do not presently cover those activities.

1.17 The amendments sought to address public concerns that the future commercialisation or even privatisation of these ABC services is being contemplated and is possible under the existing legislation. By bringing these services within the core functions of the ABC, the amendments would have gone some way to ensuring the future independence of the ABC from commercial interests and influences and updated the ABC's enabling Act consistent with its expanding role in the digital world.¹¹

1.18 Labor has clearly stated our position that it is appropriate for online, datacasting and other emerging activities to be included in the Act and Charter of the ABC. The *Broadcasting Legislation Amendment Bill 2001* will insert datacasting functions into the ABC Act if passed by the Parliament in its present form.¹² It is our policy position that new fields of endeavour should be regulated and comprehended by the Act and the Charter.¹³

8 Australian Broadcasting Corporation, Submission 6, p 2.

9 Australian Broadcasting Corporation, Submission 6, pp 2-3.

10 Senator Mark Bishop, Senate Hansard, 27/2/01, P22037 ff.

11 Senator Mark Bishop, Senate Hansard, 27/2/01, P22038.

12 Schedule 2 Item 3, *Broadcasting Legislation Amendment Bill 2001*.

13 Senator Mark Bishop, Senate Hansard, 27/2/01, P22038.

1.19 However the Democrats and the Government combined to defeat Labor's amendments in the Senate which would have included online services in the ABC Act. Online services are a notable omission now that datacasting functions are to be included in the Act.

1.20 Importantly, the amendments would have extended the ban on advertising on ABC broadcasts to the ABC's online and datacasting services. Escalating public concern about the commercialisation of the ABC was exacerbated by the leaking of the Bales Report late last year which advised the ABC on establishing advertising and commercial links on its website.

1.21 It is unfortunate that this opportunity to unequivocally pronounce that advertising on the ABC is unacceptable was passed over by the Democrats and the Howard-Anderson Government.

1.22 Labor Senators believe the express inclusion of datacasting and online services in the ABC Act is appropriate and the inclusion of online and other services in the new media environment needs to be addressed in the near future.

Recommendations

Labor Senators restate our support for:

- **legislative measures to prohibit advertising on any ABC service; and**
- **the inclusion of new services in the digital environment, such as online services, within the ABC Act so that they are core functions of the broadcaster that cannot be commercialised or privatised.**

Senator Mark Bishop (A.L.P., W.A.)

ADDITIONAL COMMENTS BY SENATOR VICKI BOURNE TO INQUIRY INTO ABC ONLINE

1.1 This is the final report to the Senate Environment, Communications, Information Technology and the Arts References Committee which was referred three terms of reference to inquire into the proposed Telstra/ABC online content deal.

1.2 The Committee presented its interim report in April 2000. This report focussed on the first two terms of reference:

any existing commercial arrangements for the production, supply or distribution of Australian Broadcasting Corporation (ABC) material online, including, but not limited to, mechanisms for ensuring ABC editorial control and independence;

any proposed commercial arrangements for the production, supply or distribution of ABC material online, including, but not limited to, mechanisms for ensuring ABC editorial control and independence.

1.3 In the Committee's interim report, the Democrats made ten recommendations, designed to ensure the integrity and independence of the ABC is upheld and maintained. Given the majority of these recommendations related to the specifics of the Telstra/ABC deal it is not necessary to restate them in their entirety. This does not diminish their importance, and we refer readers back to the Committee's interim report.

1.4 It is, however, important to restate those recommendations which relate to the ongoing independence and integrity of the ABC – and which are broader than the Telstra deal itself.

1.5 The first is the recommendation calling on the ABC Board to maintain the ABC's prohibition on advertising and sponsorship on ABC online and any ABC content sold to third parties. The Democrats restate our commitment to the prohibition on advertising and sponsorship for all ABC programs across all ABC services.

1.6 Most recently, the Committee considered the final term of reference, that:

any extension to legislation which could be considered to ensure that the ABC is able to effectively provide an independent, innovative and comprehensive service in the online delivery environment.

1.7 The Committee, following its deliberations, has recommended that:

“at this time, any extension to legislation to ensure that the ABC is able to effectively provide an independent, innovative, and comprehensive service in the online delivery environment is not warranted”.

1.8 However, while the Committee is of this view, the Democrats make the following additional comments.

1.9 When commenting on the final term of reference in the interim report, the Democrats indicated that the legislative coverage of ABC online is a significant factor in bringing uncertainty into the future direction of the ABC and ABC online.

1.10 The Democrats noted that ABC Online is a unique case in that the ABC Act does not yet cover it.

1.11 We raised concerns about the creeping commercialisation of the ABC in a climate of substantial reductions in public funding. There were fears that the ABC was becoming increasingly reliant upon external funds, and that further pressures to accept external funding for programming, either directly or through advertising, may become more intense if the funding crisis continues.

1.12 We were concerned that the proposed deal between the ABC and any other third party had the potential to compromise of the ABC's editorial independence and integrity through a dependence on commercial revenues through fees, which itself imposes a commercial imperative. The Democrats are absolutely opposed to the ABC operating services solely for the purpose of deriving commercial revenues.

1.13 The Democrats strongly disputed the ABC's views that it is a matter of Board discretion as to whether to allow advertising on ABC online. The technologies which make up ABC online were not foreseen when the ABC Act was drafted, however, it is clearly a general intention of the ABC Act that the prohibition on advertising and sponsorship should apply to all ABC services, something which current Board policy recognises.

1.14 The Democrats agree with the recommendations presented in evidence that it is simply a matter of amending section 31 of the ABC Act to extend the prohibition on advertising to ABC online.

1.15 We further maintain that the maintenance of ABC online should continue as a core ABC activity. Inappropriate constraints should not be imposed on the ABC's freedom of action in developing a strong presence in the evolving convergent environment. However, this freedom needs to be balanced in accordance with the ABC's charter and core responsibilities as a respected public broadcaster and institution. Editorial integrity and independence are to be preserved to ensure the continuation of the value of the 'ABC brand'.

1.16 A number of witnesses recommended that the role of ABC online should be defined in the ABC Act. Having further considered the evidence brought before the Committee by several submitters, the Democrats agree that legislative amendment is required to reflect the growth of additional services, where these services are delivered by new technological means. This is in order that current ABC editorial policies to protect the independence and integrity of the services can apply without confusion. It

is also to ensure that the current prohibition on advertising and sponsorship can equally apply to the provision of new services.

1.17 In their supplementary submissions to the ABC Online inquiry, the CPSU, the Australian Key Centre for Cultural and Media Policy, and Mr Quentin Dempster were of the view that the ABC Act should be amended to provide a reference to online technologies. Further, the CPSU and Mr Dempster were concerned that the Senate Committee has not received a copy of the legal advice which the ABC sought to uphold their view that the ABC Act did not require additional amendment to prevent advertising on ABC online services.

1.18 However, during debate on the Broadcasting Legislation Amendment Bill, the issue of amending the ABC Act to prohibit advertising on ABC Online arose. The Democrats are of the view that the ABC Act should be amended to fully reflect the Board's current policy that this prohibition be extended. A simple amendment to the ABC Act at section 31 would preserve the ABC's independence and integrity in an online environment.

1.19 The Democrats reserve the right to pursue any concerns in relation to the ABC's provision of online services, if and when any concerns may arise.

1.20 The Democrats will table a Private Senator's Bill to reflect the concerns raised in the Senate Committee in relation to the prohibition on advertising and sponsorship on ABC online services. Simply, this Private Member's Bill will amend section 31 of the ABC Act in accordance with the wishes of those who made submissions to the third term of reference to the Senate Committee.

Senator Vicki Bourne (AD, NSW)

APPENDIX 1 - LIST OF SUBMISSIONS

1	Mr Quentin Dempster	NSW
2	Friends of the ABC	VIC
3	Ms Ramona Koval	VIC
4	Community and Public Sector Union (CPSU)	NSW
5	Australian Key Centre for Cultural and Media Policy	QLD
6	Australian Broadcasting Corporation	NSW
7	Cancer Information & Support Society	NSW

